

### REMARKS

Claims 72, 73 and 74 have been amended to recite that Xaa is Phe, Trp or Tyr. This amendment has been made so that the claims are consistent with description of Xaa in the sequence listing. New claims 90-116 include limitations present in claims 72-74, 78 and 84. No new matter has been added.

#### Rejections Under 35 U.S.C. §112, second paragraph

The Examiner rejected claims 72-74, 78 and 84 as allegedly indefinite for reciting that "Xaa is selected from Phe, Trp and Tyr". The Examiner stated that the length of SEQ ID NO:125 is unclear. Specifically, the Examiner stated that it was unclear whether the SEQ ID NO:125 contains 13 or 16 amino acids. Applicant has amended claims 72, 73 and 74 to recite that "Xaa is Phe, Trp or Tyr". This wording, which was adopted from the sequence listing, makes it clear that SEQ ID NO:125 is 13 amino acids long. In view of the forgoing, Applicants respectfully request that the rejections 35 U.S.C. §112, second paragraph be withdrawn.

#### Rejections Under 35 U.S.C. §102(b)

The Examiner rejected claims 72, 78, and 84 as anticipated by Giannella (*J Lab and Clin Med* 125:173, 1995). The Examiner stated that Giannella discloses the amino acid sequence of *E. coli* Sth, a peptide that the Examiner states is a 92% match to SEQ ID NO:125. The Examiner does not contend that Giannella discloses a peptide comprising the amino acid sequence of SEQ ID NO:125. Instead the Examiner argues that the rejected claims are anticipated because "Applicant claims are clearly open to other active ingredients such as peptides".

Giannella does not anticipate any of the present claims. For a reference to anticipate a claimed invention "every element of the claimed invention must be identically shown in a single reference" *In re Bond*, 910 F.2d 831 (Fed. Cir. 1990). Giannella does not disclose a peptide comprising the amino acid sequence of SEQ ID NO:125. Thus, it cannot anticipate any of the present claims. The fact that the present claims are open and could include peptides in the prior art in addition to the specified peptides is not a grounds for an obviousness rejection.

Applicant : Mark G. Currie et al.  
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Filed : January 28, 2004  
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In view of the forgoing, Applicants respectfully request that the rejections under 35 U.S.C. §102(b) be withdrawn.

Conclusion

It is believed that the claims are in condition for allowance. Please apply any charges or credits to deposit account 06-1050.

Respectfully submitted,

  
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Date: January 4, 2007

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